

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
v.) No.: 2:12-CR-003
)
BRANDON ROYCE CLARK)

MEMORANDUM AND ORDER

Acting *pro se*, the defendant has filed a “Motion for Reduction of Sentence Pursuant to Title 18 USC § 3582(c)(2)” [doc. 31]. The United States responded to the motion, correctly stating that § 3582(c)(2) does not authorize the requested relief [doc. 32]. The defendant then replied, asking the court to construe his filing “in light most favorable to the body of the motion . . . [and] choose the appropriate writ to grant the relief sought” [doc. 34].

The court presumes that the defendant intends to file a motion to vacate under 28 U.S.C. § 2255. However, the court will not recharacterize the motion as a § 2255 filing at this time because such a recharacterization carries potentially adverse consequences of which the defendant may be unaware.

In such circumstances the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

See Castro v. United States, 540 U.S. 375, 383 (2003).

Therefore, the Clerk of Court is **DIRECTED** mail the defendant a copy of this order, accompanied by the form which is used to file motions to vacate under § 2255. **No later than December 4, 2015**, the defendant must either: (1) fill out and return the attached preprinted form motion to signify that, in submitting his letter, he intended to bring a motion to vacate under § 2255, and he must explain why his § 2255 motion was not filed within one year of the date upon which his judgment of conviction became final; or (2), if he does not choose option (1), he must describe, in writing and in sufficient detail, the specific type of action or motion he is filing and explain the basis upon which the requested relief can be granted. If the defendant does not timely comply with this order, the court will assume that he does not wish to proceed in this matter and will deem his motion [doc. 31] withdrawn.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan
United States District Judge